

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION
Washington, D.C. 20590**

Locomotive Engineer Review Board

Review and Determinations Concerning
Union Pacific Railroad Company (UP's)
Decision to revoke Mr. V.A. McCarty's Engineer Certification

FRA Docket Number EQAL-00-43

Decision

The Locomotive Engineer Review Board (Board) of the Federal Railroad Administration (FRA) has reviewed the decision of Union Pacific Railroad Company (UP) to revoke Mr. V.A. McCarty's locomotive engineer certification ("certification") in accordance with the provisions of Title 49, Part 240 of the Code of Federal Regulations (49 C.F.R. Part 240). The Board hereby determines that UP's decision to revoke Mr. McCarty's Certification was improper pursuant to 49 C.F.R. Part 240 for the reasons set forth below.

Background

FRA received a petition from Mr. McCarty requesting FRA review of UP's decision to revoke his certification. The petition asserts that the revocation was improper because:

- (1) Petitioner was denied a fair and impartial hearing because he was not allowed to make an opening statement at the beginning of the hearing;
- (2) Petitioner's actions should be mitigated by improper signal alignment, since the signal is not apparent to a train coming out of the creosote track; and
- (3) Petitioner was denied a fair and impartial hearing because he was not allowed to introduce evidence potentially mitigating his responsibility in the incident.

Railroad's Response

Pursuant to 49 C.F.R. § 240.405(b) and (c), a copy of the petition was sent to UP. UP responded as follows:

- (1) The format for the investigative hearing was appropriate, since both parties were allowed to question witnesses and make closing statements; and

(2) The signal has been in place for approximately 15 years or more and Petitioner has operated in this area for 12 years. In addition, FRA studied the signal and did not require removal.

The Locomotive Engineer Review Board's Determination

Based on its review of the record, the Board has determined that:

(1) On March 12, 2000, at approximately 3:55 a.m., Petitioner was operating Train ILCHO-09 in freight service at Houston Terminal, Houston, Texas. The train crew consisted of Petitioner and a conductor.

(2) The train crew was detouring over the Creosote Track in an eastward direction, approaching Tower 68, due to signal problems. At Tower 68, the Creosote Track connects to Main Track No. 1.

(3) The crew received an *APPROACH* signal indication on Signal 148L (the signal immediately before Tower 68). The crew proceeded off the Creosote Track onto Main Track No. 1 and past Signal 108L, displaying a *STOP* indication. The crew believed that Signal 108L did not apply to their movement.

(4) The incident was reported and the crew was removed from service. Petitioner was notified by letter dated March 17, 2000 that his certification was suspended.

(5) A combined railroad discipline and Federal certification hearing was held on March 27, 2000. Petitioner was notified of his certification revocation by letter dated April 5, 2000.

Petitioner's first assertion is procedural. When reviewing procedural issues, "the Board's standard of review will be to determine whether substantial harm was caused the petitioner by virtue of the [railroad's] failure to adhere to the dictated procedures for making the railroad's decision. A finding of substantial harm is grounds for reversing the railroad's decision." 58 Fed. Reg. 18982, 19001 (April 9, 1993). The Board hereby finds there were no procedural errors causing Petitioner substantial harm, since the railroad officer stated that Petitioner would have plenty of time in which to make a statement.

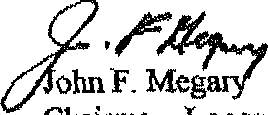
With respect to the merits of Petitioner's argument, the Board finds there are unique factual circumstances in this case. The signal was misleading. The signal placement was not in compliance with FRA's signal regulations; there was insufficient stopping distance because the signal preceding the Creosote Track was located a distance of 189 feet. Further, there is an admission at the hearing David Bader, Assistant Superintendent, that the braking distance was inadequate. Accordingly, the railroad should have placed the signal further down the track if a train on the Creosote Track was expected to be controlled by it.

Because the signals were not compliant with FRA's regulations, the issue of Petitioner's qualification in the territory has no direct bearing. Petitioner normally did not come onto the Creosote track; he

normally approached on the main track. Being detoured onto the Creosote Track was an unusual event. While the signal was compliant from a distance standpoint with respect to trains on the main track, it was noncompliant with respect to trains on the Creosote Track. In short, there was not enough stopping distance for Petitioner's train.

Based on these findings, the Board finds that UP improperly revoked Petitioner's certification and hereby grants the petition in accordance with the provisions of Title 49, Part 240 of the Code of Federal Regulations.

Issued in Washington D.C. on 3/20/01.


John F. Megary
Chairman, Locomotive
Engineer Review Board

A copy of the Locomotive Engineer Review Board decision in this matter has been sent by certified mail to each person shown below.

SERVICE LIST EQAL-00-43

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Mr. Vaughn A. McCarty
2439 NE Loop 410, #1210
San Antonio, TX 78217

Mr. Robert L. Pugmire
Director Operating Rules
SLCC-Science & Industry Bldg.
Mail Stop - Union Pacific Railroad
4600 South Redwood Road
Salt Lake City, UT 84123

for *Lynn Carroll*
John Conklin
Safety Specialist

3-21-2001
Date

cc: FRA DOCKET EQAL 00-43
FRA Docket Clerk
Federal Railroad Administration
1120 Vermont Avenue, N.W.
RCC-10
Washington, D.C. 20590